

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THASHEEN FERNANDEZ

Plaintiff,

**FIRST AMENDED
COMPLAINT**

-against-

11-CV-1915 (SLT)(MDG)

THE CITY OF NEW YORK, P.O. MACKENSO NELSON
(Shield No. 16956), JOHN DOES 1-3.

Jury Trial Demanded

Defendants.

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PRELIMINARY STATEMENT

1. This is an action for money damages brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983 for the Defendants' commissions of acts under color of law in violation of the Plaintiff's rights under Fourth, Sixth, and Fourteenth to the United States Constitution and Article I, Section 12 of the New York State Constitution and of common law of the State of New York. The case arises from an January 18, 2011 incident in which members of the New York City Police Department ("NYPD") subjected plaintiff to false arrest, excessive force, malicious prosecution, negligence and fabricated evidence.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Eastern District of New York.

PARTIES

4. Plaintiff is a resident of the State of New York.
5. The City of New York is a municipal corporation organized under the laws of the State of New York.
6. Mackenso Nelson and John Does 1-3 (collectively the "officers") are members of the NYPD who were involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest. The Officers are liable for directly participating in the acts described herein and for failing to intervene to protect plaintiff from the illegal conduct of their fellow officers and subordinates.

STATEMENT OF FACTS

7. On January 18, 2011, at approximately 3:05 p.m. in the vicinity of 542 Gates Avenue in Brooklyn, New York, approximately four Officers, arrested plaintiff without cause and charged him with Attempted Tampering with Physical Evidence and Obstructing Governmental Administration in the Second Degree.

8. Plaintiff was merely walking home to his home at 542 Gates Avenue when he was stopped and questioned by the officers. When one of the officers stuck his hands inside plaintiff's trousers in order to search for contraband, plaintiff verbally objected. In response to this objection plaintiff was thrown to the ground, landing face first in the snow. Subsequent to the seizure, one of the Officers subjected plaintiff to excessive force by handcuffing plaintiff unreasonably tight causing marks on plaintiff's wrists. After being placed under arrest, plaintiff was taken to the precinct.

10. Plaintiff was later taken to Central Booking for further arrest processing and to await arraignment.

11. During this period, an Officer or Officers met with an Assistant District Attorney and misrepresented that plaintiff had committed crimes.

12. Around 4:00 P.M. on January 19, 2011, plaintiff was arraigned in Criminal Court, Kings County and received an ACD.

13. As a result of defendants' actions, plaintiff experienced pain and physical injuries to his wrists, emotional distress, fear, embarrassment, humiliation, discomfort, loss of liberty, loss of income, and damage to reputation.

**FEDERAL CLAIMS AGAINST POLICE
OFFICERS MACKENSO NELSON AND JOHN
DOES 1-3**

14. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-13 as if fully set forth herein.

15. The conduct of the Officers as described herein, amounted to false arrest, excessive force, fabricated evidence, and malicious prosecution. This conduct violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

**FEDERAL CLAIM AGAINST THE CITY OF
NEW YORK**

16. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-15 as if fully set forth herein.

17. The City of New York directly caused the constitutional violations suffered by plaintiff.

18. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the City, and from the City's own observations, that its police and correction officers, including the individual defendants, are unfit, ill-tempered officers who have the propensity to commit the acts alleged herein. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor its officers and improperly retained and utilized them. Moreover, the City of New York failed to adequately investigate prior complaints against its officers.

19. The aforesaid conduct by the City of New York violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth, Sixth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Costs, interest and attorney's fees;
- d. Such other and further relief as this Court may deem just and proper,

including injunctive and declaratory relief.

DATED: May 4, 2011
New York, New York

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